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12 UNITED STATES DISTRICT COURT

13 SOUTHERN DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA) No. 16CR1409-H
15 v.)
16) JOINT MOTION TO (1) CONTINUE
17) MOTION HEARING AND (2) EXCLUDE
18) TIME UNDER THE SPEEDY TRIAL ACT
19)
20 HOOTAN MELAMED (1),)
21 JOHN PANGELINAN (3),) Date: January 23, 2017
22 PHONG H,UNG TRAN (4),) Time: 2:00 p.m.
23 JONATHAN PENA (5),)
24)
25)
26 Defendants.)
27)
28)

19 The captioned parties jointly move to continue the motion hearing
20 currently set for January 23, 2017 at 2:00 p.m. to May 22, 2017 at 2:00
21 p.m., and to exclude time under the Speedy Trial Act pursuant to 18
22 U.S.C. § 3161(h)(7). In support, the parties submit as follows:

23 1. On June 16, 2016, a federal grand jury returned a 14-count
24 indictment charging the defendants with conspiracy, honest services
25 mail fraud, violations of the Travel Act, and criminal forfeiture, in
connection with an alleged \$34 million kickback and bribery scheme
through which service providers paid bribes and kickbacks to doctors to
write prescriptions for compound creams or make referrals for durable

1 medical equipment, and then to submit them to specific pharmacies and
2 companies to be filled.

3 2. The defendants made their initial appearances and were
4 arraigned on the indictment in the Southern District of California on
5 June 28, 2016. The Speedy Trial Act, 18 U.S.C. § 3161(c)(1), requires
6 trial to commence within 70 days from that date. Section 3161(h)
7 excludes certain periods of time in calculating the 70 days, including
8 delay resulting from a continuance if the court finds "the ends of
9 justice served by taking such action outweigh the best interest of the
10 public and the defendant in a speedy trial." 18 U.S.C. § 3161(h)(7)(A).
11 The court must "set[] forth . . . either orally or in writing, its
12 reasons" for the finding. Id. The court "shall consider" the following
13 factors, "among others":

14 (i) Whether the failure to grant such a continuance in the
15 proceeding would be likely to make a continuation of such
16 proceeding impossible, or result in a miscarriage of
justice.

17 (ii) Whether the case is so unusual or so complex, due to
18 the number of defendants, the nature of the prosecution, or
19 the existence of novel questions of fact or law, that it is
unreasonable to expect adequate preparation for pretrial
proceedings or for the trial itself within the time limits
established by this section.

20 . . .

21 (iv) Whether the failure to grant such a continuance in a
22 case which, taken as a whole, is not so unusual or so
23 complex as to fall within clause (ii), would deny the
24 defendant reasonable time to obtain counsel, would
unreasonably deny the defendant or the Government
continuity of counsel, or would deny counsel for the
defendant or the attorney for the Government the reasonable
time necessary for effective preparation, taking into
account the existence of due diligence.

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26 U.S.C. § 3161(h)(7)(B). "No continuance under [this provision] shall be
27 granted because of general congestion of the court's calendar, or lack
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1 of diligent preparation or failure to obtain available witnesses on the
2 part of the attorney for the Government." U.S.C. § 3161(h)(7)(C).

3 3. The parties agree that the ends of justice served by granting
4 the requested continuance outweigh the best interest of the public and
5 the defendants in a speedy trial, for the following reasons:

6 a. According to the indictment, the alleged scheme involved
7 years' worth of medical treatments, millions of dollars in bills,
8 thousands of dollars in corrupt payments, and hundreds of patients.

9 b. Because the claims involve patient identities, medical
10 treatment, and billing records, the discovery in this case is
11 sensitive. The Court issued a protective order on July 18, 2016.

12 c. The discovery consists of thousands of pages of bank
13 records, agent reports, and subpoenaed documents, as well as
14 hundreds of audio recordings ranging in duration from a few minutes
15 to over an hour.

16 d. Given the volume of discovery and the need to protect
17 and limit its disclosure, the defense needs time to review the
18 material before they can file and litigate pretrial motions and
19 provide an estimate of trial length.

20 4. Accordingly, the parties request a continuance of the motion
21 hearing until May 22, 2017.

22 5. The parties have exercised due diligence. The parties submit
23 that the amount of discovery and the nature of the charges make it
24 unreasonable to expect adequate preparation for pretrial proceedings or
25 the trial itself within the time limits established by the Speedy Trial
26 Act. The parties further submit that the failure to grant the requested
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continuance would deny counsel the reasonable time necessary for effective preparation and result in a miscarriage of justice.

6. Defendants are all currently out of custody.

7. Counsel for defendants represent that they have discussed the need for this continuance with their respective clients, and that each defendant agrees to and joins in the request for this continuance.

8. The parties therefore jointly move for a continuance and to exclude time under the Speedy Trial Act. The parties agree the period of delay excluded spans from the filing of this joint motion until the new date for the hearing pursuant to U.S.C. § 3161(h)(1)(D) and (h)(7)(A); specifically, that the time between January 23, 2017 and May 22, 2017 shall be excluded.

SO STIPULATED AND AGREED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA) No. 16cr1409-H
Plaintiff,)
v.) CERTIFICATE OF SERVICE
HOOTAN MELAMED (1),)
JOHN PANGELINAN (3),)
PHONG HUNG TRAN (4),)
JONATHAN PENA (5),)
Defendants.)

IT IS HEREBY CERTIFIED THAT:

I, Valerie H Chu, am a citizen of the United States and am at least 18 years of age. My business address is 880 Front Street, San Diego, California 92101-8893.

I am not a party to this case. I have caused service of the attached Joint Motion on the parties to this case by filing the foregoing with the Clerk of the District Court using its ECF system, which electronically notifies them.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 19, 2017

s/ Valerie H. Chu
VALERIE H. CHU